

1 The Honorable Richard A. Jones  
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9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE WESTERN DISTRICT OF WASHINGTON**  
11 **AT SEATTLE**

12 METH LAB CLEANUP, LLC, an Idaho  
13 limited liability company,

14 Plaintiff,

15 v.

16 BIO CLEAN, INC., a Washington  
17 Corporation, and THERESA BORST, an  
18 individual,

19 Defendants.

20 BIO CLEAN, INC., a Washington corporation,

21 Counterclaim Plaintiff,

22 v.

23 METH LAB CLEANUP LLC, an Idaho  
24 limited liability company,

25 Counterclaim Defendant.

26 Case No. 2:14-cv-01259-RAJ

27 **COUNTERCLAIM PLAINTIFF**  
28 **BIO CLEAN, INC.'S MOTION**  
**FOR ENTRY OF DEFAULT**  
**AGAINST COUNTERCLAIM**  
**DEFENDANT METH LAB**  
**CLEANUP LLC**

NOTE ON MOTION CALENDAR:  
November 26, 2014

## I. Introduction

Counterclaim Plaintiff Bio Clean, Inc. respectfully requests an order of default against Counterclaim Defendant Meth Lab Cleanup LLC.

Plaintiff Meth Lab Cleanup LLC brought this lawsuit against Bio Clean, Inc. and its owner and principal Theresa Borst in order to prevent Bio Clean from using the phrase “meth lab cleanup” to describe Bio Clean’s meth-lab cleanup services. Meth Lab Cleanup alleges infringement of its federal trademark registrations for METH LAB CLEANUP and METH LAB CLEANUP LLC for services like the “decontamination of illegal clandestine drug lab sites.” (See Complaint ¶ 12.)

Bio Clean filed counterclaims against Meth Lab Cleanup seeking cancellation of Meth Lab Cleanups' federal trademark registrations on the grounds that they are generic for "meth lab cleanup services" and were obtained based on fraudulent representations to the U.S. Patent & Trademark Office during prosecution. Meth Lab Cleanup failed to answer Bio Clean's Counterclaims within the time provided under Rule 12 of the Federal Rules of Civil Procedure.

Bio Clean has complied with the requirements for obtaining an entry of default under both Rule 55 and Local Rule 55(a). Accordingly, Bio Clean respectfully requests that the Clerk enter default against Meth Lab Cleanup.

## II. Factual Background

On August 15, 2014, Meth Lab Cleanup initiated this trademark-infringement action against Bio Clean, Inc. and its President Theresa Borst. (See Complaint (Dkt #1); Declaration of Derek Linke in Support of Counterclaim Plaintiff Bio Clean, Inc.’s Motion for Entry of Default Against Counterclaim Defendant Meth Lab Cleanup LLC (Linke Decl.) ¶ 2.)

On October 15, 2015 Bio Clean filed its Answer, Affirmative Defenses, and Counterclaims (Counterclaims) (Dkt. #17) in response to Meth Lab Cleanup's

1 Complaint. (Linke Decl. ¶ 3.) Bio Clean's Counterclaims<sup>1</sup> affirmatively seek a judgment  
 2 of affirmative relief against Meth Lab Cleanup: the cancellation of Meth Lab Cleanup's  
 3 federal trademark registrations on the grounds that they are generic for "meth lab cleanup  
 4 services" and were obtained based on fraudulent representations to the U.S. Patent &  
 5 Trademark Office during prosecution. (Counterclaims, Prayer for Relief; Linke Decl.  
 6 ¶ 4.)

7 Bio Clean served its Counterclaims on Meth Lab Cleanup upon filing it with the  
 8 Court's ECF system which delivered a copy to Meth Labs Cleanup's counsel of record,  
 9 as indicated on the Certificate of Service included in the Counterclaims. (Counterclaims,  
 10 p. 32; Linke Decl. ¶ 5.) Under Rule 12(a)(B), Meth Lab Cleanup's response to Bio  
 11 Clean's Counterclaims was due within 21 days of the October 15 service, which was  
 12 November 5, 2014. (Linke Decl. ¶ 6.) Meth Lab Cleanup did not file and serve a response  
 13 to Bio Clean's Counterclaims by November 5, 2014. (*Id.* ¶ 7.)

14 On November 12, 2014, Meth Lab Cleanup still had not responded to Bio Clean's  
 15 Counterclaim. (*Id.* ¶ 8.) So on November 12, 2014, Bio Clean's counsel provided written  
 16 notice to Meth Lab Cleanup's counsel of Bio Clean's intention to seek entry of default  
 17 within fourteen days if Meth Lab Cleanup did not respond to Bio Clean's Counterclaims.  
 18 (*Id.* ¶ 9, Ex. A.) That written notice stated as follows:

19 I hope you are doing well. I'm writing in reference to the counterclaim by  
 20 Bio Clean against Meth Lab Cleanup Company. Currently, we have not  
 21 received an Answer to the Counterclaim and the deadline has passed.  
 22 Perhaps this was an oversight. This message is also intended to serve as  
 23 notice under Local Rule 55 that Bio Clean will move for default in 14 days if  
 24 an answer is not filed prior to then.

25 (*Id.*)

26 It has been fourteen days since Bio Clean provided written notice of its intention to  
 27 move for entry of default on November 12, 2014. (*Id.* ¶ 10.) Meth Lab Cleanup has not  
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27 <sup>1</sup> Defendant Borst separately filed a motion to dismiss Meth Lab Cleanup's claims against  
 28 her under Rule 12(b)(6) on the basis that they fail to state a claim for relief. (Dkt. #18.)  
 Borst's motion has been fully briefed and is pending a determination by the Court.

1 filed and served an answer to Bio Clean's Counterclaims or otherwise defended them. (*Id.*  
 2 ¶ 11.)

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### 4 III. Discussion

5 Entry of default is required when "a party against whom a judgment for affirmative  
 6 relief is sought has failed to plead or otherwise defend, and that failure is shown by  
 7 affidavit or otherwise". Fed. R. Civ. P. 55(a)(1). Under Local Rule 55(a), the "clerk shall  
 8 enter the default of any party against whom a judgment for affirmative relief is sought but  
 9 who has failed to plead or otherwise defend" upon motion supported by an affidavit  
 10 specifically showing that the defaulting party was served in accordance with Rule 4.

11 An entry of default against Meth Lab Cleanup is appropriate here, as shown by the  
 12 declaration filed in support of this motion. Counterclaim Plaintiff Meth Lab Cleanup was  
 13 served with Bio Clean's Counterclaims seeking a judgment for affirmative relief on  
 14 October 15, 2014. (Linke Decl. ¶¶ 3-5.) Under Rule 12(a)(B), Meth Lab Cleanup was  
 15 required to serve an answer to Bio Clean's Counterclaims within twenty-one days of  
 16 service, which was November 5, 2014. (Linke Decl. ¶ 6.) It is now November 26 and  
 17 Meth Lab Cleanup still has not answered Bio Clean's Counterclaims. (*Id.* ¶ 11.)

18 Additionally, Bio Clean complied with its obligation under Local Rule 55(a) to  
 19 provide written notice "at least fourteen days prior to filing its motion" for default. Bio  
 20 Clean provided written notice of its intention to move for entry of default to Meth Lab  
 21 Cleanup's counsel on November 12, 2014—fourteen days from the filing on this motion  
 22 on November 26. (Linke Decl. ¶¶ 8-10.) Evidence of Bio Clean's November 12, 2014  
 23 written notice of its intention to move for default is provided in the declaration filed in  
 24 support of this motion, including an authenticated copy of the written notice sent to Meth  
 25 Lab Cleanup's counsel. (*See id.*, Ex. A.)

## IV. Conclusion

Meth Lab Cleanup failed to answer Bio Clean's Counterclaims within the time provided under the Federal Rules of Civil Procedure. Bio Clean has complied with the requirements for obtaining an entry of default under both Rule 55 and Local Rule 55(a). Accordingly, Bio Clean respectfully requests that the Clerk enter default against Counterclaim Defendant Meth Lab Cleanup.

Dated: November 26, 2014 Respectfully Submitted,

## WATERS LAW GROUP

s/ Robert R. Waters

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Attorneys for Defendants  
Bio Clean, Inc. and Theresa Borst

## Certificate of Service

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on this the 26<sup>th</sup> day of November, 2014. Any other counsel of record will be served with a true and correct copy of the foregoing by mail or facsimile.

s/ Derek Linke

Derek Linke